IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.8275 OF 2005

1. Smt.Manisha M. Nimkar]
Age 46 years, Occupation Social]
service]
2. Manohar A. Nimkar]
Age 53 years, Occupation Retired]
3. Vivek Manohar Nimkar,]
Age 26 years, Occupation Dealer]
All three residing at Shivai]
Bunglow at Kardal, Tal.Palghar]
Dist. Thane]
4. Raghunath Radkya Patil]
Age 53 years, Occup.Agriculture]
Resident of Village Saravli]
Post Umarpada, Tal. Palghar]
Dist. Thane]
5. Anand Govind Parab]
Age 25 years, Occup. Service]
Residing at Gayatri Co-operative] Petitioners.
Housing Society, Ltd.,] (Org.Accused
Sector - 7, Sanpada,] Nos.4,3,5,6

Navi Mumbai] and 9)

versus

State of Maharashtra] Respondent.

ALONG WITH

CRIMINAL APPLICATION NO.8545 OF 2005

1.Ravindra Vithal Gauda]
Age about 53 years,]
Occ. Agriculturist]
Resident of Maakane,]
Post Umbarpada]
Tal. Palghar, Dist.Thane 411 102]
2. Manoj Sadashiv Pandit]
Age 33 years, Occ.Business/]
Self employed,] Applicants.
Resident of Kardal, Safala] (Org.accused
Post Umbarpada, Tal Palghar] Nos.7 and 8)
Dist. Thane 411 102

versus

The State of Maharashtra] Respondent.

Mr.A.P.Mundergi with Mr.S.V.Marwadi and Mr.Ganesh Gole for the petitioners/applicants.

Mr.S.R.Borulkar, Public Prosecutor, with Mr.S.S.Tatkare, and Ms.S.D.Shinde, APP, for the

State/Respondent.

CORAM : V.M.KANADE, J.

DATED : 13th January 2006.

COMMON ORAL ORDER:

1. Both the applications can be disposed of by a common order. The applicants in both the applications are apprehending their arrest in connection with C.R.No.I 63 of 2005 which is registered by Safale Police Station and which is being investigated by Local Crime Branch Thane on a complaint being filed by Pravin Madhukar Raut. The 1st applicant in Criminal Application No.8275 of 2005 is the member of Legislative Assembly, Maharashtra State. The 2nd applicant is the husband of 1st applicant and the 3rd applicant is the son of 1st and 2nd applicants. Applicant No.4 is the party worker of the 1st applicant and Applicant No.5 is the personal assistant of 1st applicant. Both the applicants in Criminal Application No.8545 of 2005 are also the party workers of the 1st applicant in Criminal Application No.8275 of 2005.

2. Smt.Manisha Nimkar, the 1st applicant, is the member of Shiv Sena Party and she is a sitting M.L.A from Palghar Taluka Constituency and was elected on three consecutive occasions i.e. in 1995, 1999 and 2004. The learned counsel appearing on behalf of the applicants has submitted that there was a political rivalry between Shiv Sena's MLAs and the MLAs belonging to other political party. There was also internal rivalry between the Shiv Sena fraction and the fraction which had split away from the Shiv Sena which was spear headed by Shri Narayan Rane. The learned counsel appearing for the applicants has invited my attention to para 10 of the application and also to the Additional Submission, which has been filed, in which various instances of political rivalry have been enumerated in detail.

3. On 24th November 2005 Pravin Raut filed a complaint against Tukaram Maruti Rane - the accused No.1 in the present case, alleging that Shri Narayan Rane during the course of his election speech had referred to the alleged killing contract which was given to the said Tukaram Rane to kill Pravin Raut at the instance

of applicant No.1 Smt.Manisha Nimkar and in the said complaint he alleged that there was a conspiracy to commit his murder and prayed that action under Section 156(3) of the Cr.P.C. should be taken. The learned Magistrate directed the Local Crime Branch to investigate the matter. An offence was registered vide C.R.No.63 of 2005 on 29.11.2005 against Tukaram Rane. The accused Tukaram Rane was arrested on 1st December 2005. He was produced before the learned Magistrate on 2nd December 2005 and in the said remand application itself, the police prayed for the judicial custody of accused No.1 on the ground that accused No.1 was willing to make a confession under Section 164 of the Criminal Procedure Code. The said application was allowed and, thereafter on the same day section 118 was added to the C.R. which was already registered. The confession was recorded. Thereafter an application for remand has been filed against the present applicants and also against Accused No.1 Tukaram Rane. He was remanded to the police custody till 12th December 2005. In the mean time, Shri Narayan Rane handed over the audio cassette to the press and, therefore, the present applicants had an apprehension that they would be

arrested in the present case and, accordingly, they filed the application before the Sessions Court, Palghar. It was rejected and, thereafter, the present applications have been filed in this Court.

4. The respondents have filed detailed affidavit in reply. In their affidavit in reply chronology of events has been stated in para 3. The learned Public Prosecutor appearing on behalf of the State/respondent has shown me the papers of investigation and also the transcript of tape recorded conversation. It is submitted by the Public Prosecutor appearing for the State submitted that the investigation has just began and the custodial interrogation of the applicants was essential. He submitted that the FIR discloses a very serious offence and which reflected the changing trend of crimes in politics and use of criminals for the purpose of eliminating political opponents. He further submitted that the complainant was the political opponent of the applicants and they had conspiracy to eliminate him by using the service of accused No.1. He submitted that though ordinarily the confession made by the co-accused

may not be admissible in evidence yet if it discloses commission of a serious offence, then on the basis of said disclosure made by the co-accused, the police have right to investigate the offence and for that purpose custodial interrogation of the applicants was essential. He invited my attention to the judgment of the Supreme Court in the case of **State of A.P. versus Bimal Krishna Kundu and another** reported in **(1997) 8 SCC 104** in which the apex Court had set aside the order of anticipatory bail granted by the High Court and had observed that in a case in which there was an allegation of well-orchestrated conspiracy, it was not always possible to interrogate the accused who was equipped with a pre-arrest bail order and on that ground set aside the order of anticipatory bail granted by the High Court.

5. I have heard the learned counsel appearing on behalf of the applicants and the learned Public Prosecutor appearing on behalf of the State/respondent. I have gone through the police papers pertaining to the investigation of the case and also the transcript of the tape recorded conversation between the accused No.1

and the present applicants.

6. The law on question of grant of anticipatory bail is quiet well settled. The Supreme Court in the case of **Gurubaksh Singh Sibbia v. State of Punjab** reported in **AIR 1980 SC 1632** considered the provision after it was introduced in the Cr.P.C. A perusal of object of the reasons for the introduction of Section 438 and the Law commission's report reveals that the legislative felt that the time was ripe to introduce the present provision in order to protect the politicians and the members of Legislative Assembly and Parliament and the businessman and similarly situated persons who had to suffer as a result of criminal complaints which were filed against them to settle private, personal, political and business scores and in this background the Supreme Court felt that it was not essential for the accused to remain in jail and thereafter to apply for regular bail because by that time sufficient damage would be caused to the esteem and personal image of such a person. The Supreme Court, therefore, laid down the guide lines in the said judgment for grant of anticipatory bail which have been followed by

subsequent decision which had laid down further contingencies in which such an order of anticipatory bail can be granted in favour of the accused. In para 8 of the said judgment the Supreme Court has observed as :-

> "Para 8. No one can accused the police of possessing a healing tough nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sang-froid, in so far as the ordinary rule of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the criminals and even the complainants can occasionally possess extraordinary features. When the even flow of life becomes turbid, the police

> can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand-cuffs, apparently on way to a court of justice. The foul deed is done when an adversary, is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973.

In the light of aforesaid observations made by the Supreme Court and taking into consideration the ratio laid down by the Supreme Court in the said judgment it will have to be examined,

whether the applicants in the present case had made out a case for grant of anticipatory bail.

7. The admitted position in the present case is that according to Tukaram Rane, who has given confession, which was recorded by the Special Executive Magistrate under Section 164 of the Cr.P.C. had met Applicant Nos.1, 2 and 3 and the conspiracy to eliminate the complaint was hatched. He has stated that along with him two other persons were also present. He has further stated that one of the applicants was to supply revolver to him for the purpose of eliminating the complainant. This happened some time in 2003. Thereafter after 7-8 months he was in need of amount of Rs.30,000/- and demanded that money from Applicant No.2. However, the said money was not paid to him and, therefore, he decided to tape record the conversation and, accordingly he started recording the conversation since December 2003. I have perused the transcript. From the transcript, prima facie, it appears that there is no material to show that there was any conspiracy to eliminate the complainant.

8. Further it can be seen that out of two

other persons, who were present along with accused No.1 Tukaram Rane, one person was killed. However, no efforts appear to have been taken by the Investigating Officer to trace the 3rd person from the said accused No.1 Tukaram Rane as his statement would have corroborated the confessional statement of accused No.1.

9. Further there is considerable lapse of time between the tape recorded conversation by accused No.1 Tukaram Rane and the present complaint, which is filed in December 2005, though the conversation was recorded in December 2003. The said tapes were produced by Shri Narayan Rane during the election campaign in the elections which were held at Malwan. The respondents in their affidavit have admitted that the copy of the tape recorded conversation was given to them by Shri Narayan Rane. It is an admitted position that there was political rivalry between two fractions of Shiv Sena and there was considerable tension between two fractions during the election which was held at Malwan. It has to be noted that this tape recorded conversation surfaced for the first time in December 2005 during the election campaign.

10. Another feature which creates doubt regarding confession of accused No.1 is that the complaint was filed by the complainant in December 2005, the police instead of seeking police custody of accused No.1 demanded judicial custody and accused No.1 who claims to have himself recorded telephonic conversation has given confession immediately after the complaint was lodged. In this confession he clearly stated that there was enmity between the applicants and the said Tukaram Rane and since he had a grievance against the applicants he had started recorded conversation. Actual tape recorded conversation was not produced by Tukaram Rane but was produced through some other person.

11. The entire manner in which the application was made by the Investigating Officer for seeking judicial custody and the subsequent application for his production and the outward Nos. which are given to these applications also creates a doubt that the police had prepared all the applications in advance before the judicial order was passed. This is evident from the fact that the applications had consecutive outward

numbers and the outward register was maintained at Thane and the applications were made in Palghar.

12. From the above mentioned facts it clearly discloses that the complaint was filed after lapse of two years during the election to malign the present applicants and/or to settle political scores. In this view of the matter, considering the facts and circumstances of the case, the applicants have prima facie made out a case for grant of anticipatory bail.

13. The trial court shall not be influenced by any observation made by this Court while passing this order and shall not treat it as an expression of opinion on merits of the case by this Court. In result, the following order :-

ORDER

. Both the applications are allowed.

. In the event of arrest of the petitioners by the respondent in C.R. No.I 63 of 2005 registered by Safale Police Station, they shall

be released on bail in the sum of Rs.25,000/- each with one or two sureties in the like amount.

. The petitioners to report to the Local Crime Branch, Thane from 11.00 a.m. to 5.00 p.m. for one week and, thereafter whenever required by the Investigating Officer. Interrogation shall be carried out during reasonable hours i.e. between 9.00 a.m. to 5.00 p.m..

. The petitioners shall co-operate with the Investigating Officer and may permit him to record voice sample of each of the petitioners. This direction to report to the police is till such time as the charge sheet is filed by the Investigating Officer. If the charge sheet is filed thereafter the petitioners shall report to Safale Police Station once in a month.

[V.M.KANADE,J]